

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

IN RE: Bair Hugger Forced Air Warming  
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

**SHORT FORM COMPLAINT AND  
JURY TRIAL DEMAND**

**PLAINTIFF(S)**

CLIFFORD OSTERMAN  
\_\_\_\_\_

**VS.**

**3M COMPANY AND ARIZANT  
HEALTHCARE, INC.**

1. Plaintiff, CLIFFORD OSTERMAN, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff, CLIFFORD OSTERMAN, is a resident and citizen of the State of KANSAS and claims damages as set forth below.

3. Jurisdiction is proper based upon diversity of Citizenship.

4. Proper Venue: The District Court in which remand trial is proper and where this Complaint would have been filed absent the direct filing order by this Court is Sherman County, KS.

5. Plaintiff brings this action [*check the applicable designation*]:

X

On behalf of [himself/herself];

**FACTUAL ALLEGATIONS**

6. On or about 07/2014, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of [his/her] surgery at the VA Eastern Colorado Health Care System [medical center and address], in Denver, CO [city and state], by Dr. \_\_\_\_\_.

7. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”).

8. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has undergone MULTIPLE PROCEDURES [Describe treatment(s) received, e.g., revision arthroplasty, wound vac treatment, multiple staged procedures, etc.] on or about \_\_\_\_\_, at \_\_\_\_\_ [medical center(s) and address(es)] by Dr(s). \_\_\_\_\_. [Cross out if not applicable.]

**ALLEGATIONS AS TO INJURIES**

9. (a) Plaintiff claims damages as a result of (check all that are applicable):

X

INJURY TO HERSELF/HIMSELF

\_\_\_\_\_

INJURY TO THE PERSON REPRESENTED

\_\_\_\_\_

WRONGFUL DEATH

\_\_\_\_\_

SURVIVORSHIP ACTION

X

ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable): [*Cross out if not applicable.*]

      

LOSS OF SERVICES

      

LOSS OF CONSORTIUM

10. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

11. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

X

FIRST CAUSE OF ACTION - NEGLIGENCE;

X

SECOND CAUSE OF ACTION - STRICT LIABILITY;

X

FAILURE TO WARN

X

DEFECTIVE DESIGN AND MANUFACTURE

X

THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;

X

FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF Colorado, §§           ;

X

FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;

X

SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;

X

SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;

X

EIGHTH CAUSE OF ACTION- VIOLATION OF THE

MINNESOTA FALSE ADVERTISING ACT;

X

NINTH CAUSE OF ACTION- CONSUMER FRAUD  
AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES  
UNDER LAW OF THE STATE OF Colorado,  
\_\_\_\_ §§ \_\_\_\_\_ ;

X

TENTH CAUSE OF ACTION – NEGLIGENT  
MISREPRESENTATION;

X

ELEVENTH CAUSE OF ACTION- FRAUDULENT  
MISREPRESENTATION;

X

TWELFTH CAUSE OF ACTION – FRAUDULENT  
CONCEALMENT;

\_\_\_\_\_

THIRTEENTH CAUSE OF ACTION – LOSS OF  
CONSORTIUM; and

X

FOURTEENTH CAUSE OF ACTION – UNJUST  
ENRICHMENT.

In addition to the above, Plaintiff(s) assert the following additional causes of action  
under applicable state law:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

*[Cross out if not applicable.]*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;

5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: Jun 29, 2016

Respectfully submitted,

/s/ BEHRAM PAREKH  
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